



GOVERNMENT OF INDIA

Chandigarh Administration Gazette

Published by Authority

NO. 28] CHANDIGARH, TUESDAY, MARCH 15, 2022 (PHALGUNA 24, 1943 SAKA)

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 2nd November, 2021

No. 13/1/9806-HII(2)-2021/12743.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 123/2016 dated 20.09.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

VINOD KUMAR S/O SHRI GOPI CHAND, P.O. JIKHIOL, TEHSIL BHORANJ, DISTRICT HAMIRPUR, HIMACHAL PARDESH (Workman)

AND

1. DIVISIONAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING, ADDRESS PLOT NO.701, INDUSTRIAL AREA, PHASE - I, CHANDIGARH.
2. DIRECTOR TRANSPORT, UNION TERRITORY, ADDRESS PLOT NO. 701, INDUSTRIAL AREA, PHASE - I, CHANDIGARH. (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that the Chandigarh Transport Undertaking (*hereinafter called 'CTU'*), which is a public undertaking owned and run by the Union Territory Administration, Chandigarh, there was an acute shortage of Drivers and as a result thereof, the Drivers had to perform double duty and were being paid overtime. To cope with shortage of Driver, the CTU issued an advertisement in the 'Punjabi Tribune' Chandigarh dated 11.10.2003, whereby 45 vacancies of Drivers were advertised on contract basis. The workman being fully eligible applied for the post of bus Driver, his name was recommended by the Employment Exchange. He was called for Dug Test and Road Test and was called for interview in May 2004.

The workman being successful, was selected and appointed as Driver *vide* appointment letter dated 28.06.2004.

After the workman was subjected to medical test and he was also imparted traffic education on 28.06.2004.

The appointment of the workman was made after following the due procedure of law and by considering other candidates, who had applied in pursuance to the advertisement, recommended by the Employment Exchange. Terms of contract of the workman was extended from time to time. Last extension order

(243)

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Locality: Chandigarh

was issued by the CTU *vide* order No.4394/ECD/HOD/CTU/2006 dated 07.04.2006. The workman had performed his duties to the entire satisfaction of his superiors and there is nothing adverse against him and he was deputed on local / long route bus. The workman had performed his duties upto 27.04.2006 and in the evening of 27.04.2006, his services have been ordered to be terminated by stating that since the regular appointment of Bus Drivers in SC / OBC category have been made so the contract of the workman stand terminated. As on date also various posts of Drivers are lying vacant so his services cannot be terminated. The workman was also not paid retrenchment compensation and neither any notice for retrenchment was issued. The management has not complied with the provisions of Section 25-F & 25-N of the ID Act and had not sought mandatory permission from the appropriate authority before terminating the services of the workman. The management had not complied with the provisions of Section 25-G & 25-H of the ID Act as many fresh persons as Drivers were appointed without offering the same post to the workman being retrenched employee. Action of the management is illegal & violative of Article 14 & 16 of the Constitution of India. The workman had become now overage to seek employment elsewhere. He is the only bread earner in his family and with his illegal termination his family has been ruined. The management has also not paid gratuity to the workman on his illegal termination. The claim of the workman is squarely covered by the award dated 27.02.2013 published *vide* notification No. 13/1/8640-HII(2)-2013/9958, dated 29.05.2013 passed the then Presiding Officer, Industrial Tribunal & Labour Court, Union Territory Chandigarh, whereby the claim of similarly situated employees have been accepted and the said award has also been implemented by the management. Termination of the workman is also not justified as work is available with the management and after termination of his service the contractual staff has been engaged in violation of settled law that the contractual employees cannot be replaced by another contractual employee and when the work is of permanent nature. Ultimately, it is prayed that the workman be reinstated into service along with continuity of service and back wages along with interest.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the claim of the workman is highly belated as his services were dispensed with *vide* office order dated 27.04.2006 and the present claim has been filed in the year 2016 i.e. after 10 years of cause of action. On merits, it is pleaded that there was no issue of shortage of Drivers and over time as well with the management. Advertisement with regard to recruitment of 45 Drivers on the contract basis was made *vide* notice dated 11.10.2003. An order of appointment *vide* office order No. 205/ECD/CTU/HOD/2004, dated 05.07.2004 was issued for appointment of the workman on the basis of recommendations in the interview held on 18.05.2004 for enrollment / engagement on contract basis for the post of Bus Driver. It was contemplated in the appointment order of the workman that he was engaged purely on the contract basis for a period of 89 days or till the regular incumbents, whichever is earlier. Further it was made clear that his services shall automatically stand discontinued after expiry of contract period, without assigning any notice and no compensation of any type will be admissible to him on account of discontinuation of his contractual services. Terms of the contract were extended from time to time. The workman had performed his services under the stop gap arrangement. The services of the workman were dispensed with *vide* office order dated 27.04.2006. As per Clause 5 of the appointment order, the services of the contractual Drivers can be dispensed with at any time without assigning any reason or without giving any notice. Services of the workman have been dispensed with, as per the terms & conditions of the contract and the workman is not entitled to get any type of relief from this Court. The award dated 27.02.2013 passed by this Court is not applicable in this case. The management had also recruited Drivers on contract basis in the year 1999 apart from the batch of the workman on the same terms & conditions and their services were dispensed with according to the terms & conditions of the contract but they approached before the Hon'ble Central Administrative Tribunal (CAT) by filing original applications through OANo.1159/CH/2004 which was disposed of *vide* order dated 24.05.2006 with the directions to the management to continue the services of the contractual Drivers against the vacant post till the regular incumbents are appointed. Some

of the contractual Drivers approached this Court by different references and one of the references was disposed of *vide* award dated 27.02.2013 whereby the workmen were ordered to be reinstated with 50% back wages only against the vacant post on regular basis. But at the time of termination of the contract of the workman no vacant post was available with the answering management. Other averments of the case of the workman were denied and ultimately, it is prayed that claim of the workman be dismissed.

4. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is barred by delay & laches ? OPM
3. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Smt. Baljeet Kaur as MW1. Learned Law Officer for the management closed the evidence.

6. I have heard learned representative for the workman and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

Issue No. 1 :

7. Onus to prove this issue was on the workman and to discharge the same the workman examined himself as AW1 and deposed that the CTU is a public undertaking owned and run by the Union Territory Administration, Chandigarh. There was an acute shortage of Drivers so the Drivers had to perform double duty and were being paid overtime and to cope with the same, the CTU issued an advertisement in the 'Punjabi Tribune' Chandigarh dated 11.10.2003 whereby 45 vacancies of Drivers were advertised on contract basis. He being fully eligible applied for the post of Bus Driver and his name was recommended by the Employment Exchange. He was called for dug test and road test and called for interview in May 2004. He was selected & appointed as Driver *vide* appointment letter dated 28.06.2004, subject to medical test. He was also imparted traffic education on 28.06.2004. He further deposed that his appointment was made after following due procedure of law. Terms of contract was extended from time to time and last extension order was issued by the CTU *vide* order No. 4394/ECD/HOD/CTU/2006, dated 07.04.2006. His identity card was extended upto 07.07.2008. He had performed his duties to the entire satisfaction of his superiors. He further deposed that he had performed his duties upto 27.04.2006 and in the evening of 27.04.2006, his services have been ordered to be terminated by stating that since the regular appointments of Bus Driver in SC / OBC category have been made so his contract stand terminated. As on date various posts of Drivers are lying vacant so his services cannot be terminated. He was also not paid retrenchment compensation and no notice for retrenchment was issued. The management has not complied with the provisions of Section 25-F & 25-N of the ID Act and not sought mandatory permission from the appropriate authority before terminating his services. The management has also complied with the provisions of Section 25-G & 25-H of the ID Act as fresh Drivers were appointed without offering the same post to him being retrenched. Action of the management is illegal & violative of Article 14 & 16 Constitution of India. He further deposed that his claim is squarely covered by the award dated 27.02.2013 published *vide* notification No.13/1/8640-HII(2)-2013/9958 dated 29.05.2013.

8. Learned representative for the workman has argued that as per the advertisement in 'Punjab Tribune' newspaper the workman applied for the post of Driver and recommended by the Employment Exchange thereafter in May 2004 a road test was conducted and he was called for interview in May 2004 and being successfully he was appointed on 28.06.2004 and his medical tested was conducted and imparted traffic deduction on 28.06.2004. He further argued that on 27.04.2006 the workman performed his duties and in the

evening of 27.04.2006 his services have been terminated by stating that since the regular appointment of the Bus Driver in SC / OBC category have been made therefore contract of the workman stands terminated. The services of the workman cannot be terminated as various posts are lying vacant the workman has also not been paid retrenchment compensation. No notice for retrenchment compensation was issued. The management has not complied with the provisions of Section 25-F & 25-N of the ID Act. The management has also not complied with the provisions of Section 25-G & 25-H of the ID Act. The case of the workman is clearly covered by the award dated 27.02.2013 published *vide* notification No. 13/1/8640-HII(2)/2013/9958, dated 29.05.2013 passed by the Presiding Officer, Industrial Tribunal & Labour Court, Union Territory Chandigarh. Hence, the termination of the workman is illegal. He prayed for deciding this issue in favour of the workman.

9. On the other hand, learned Law Officer for the management has examined Smt. Baljeet Kaur as MW1, who deposed that the workman was appointed by the management purely on the contract basis *vide* appointment order No. 196/ECD/CTU/HOD/2004, dated 28.06.2004. The services of the workman were hired purely on temporary basis for specific period or till the regular incumbents join the department. Terms & conditions of the appointment order were adduced in writing which were duly accepted by the workman. As per appointment order, the contractual appointment will not confer any right for regular appointment with the management and the services of the workman can be dispensed with at any time without assigning any reason or without giving any notice. She further deposed that terms of the contract were extended from time to time and the workman had performed his services under the stop gap arrangement. The services of the workman were dispensed with *vide* office order dated 27.04.2006. As per Clause 5 of the appointment, the services of the contractual Drivers can be dispensed with any time without assigning any reason or without giving any notice. She further deposed that the award dated 27.02.2013 passed by this Court is not applicable in the present case as at the time of termination of the contract of the workman, no vacant post was available with the management.

10. Learned Law Officer for the management has argued that the workman has been appointed on the contract basis and he was not terminated rather his services were dispensed with, on appointment of Bus Drivers on regular basis, as per terms & conditions of the appointment letter. Hence, the workman is not entitled for any retrenchment compensation and he prayed for deciding this issue against the workman and in favour of the management.

11. After giving my careful consideration to the rival contentions of both the sides, I find that admittedly the workman was appointed by the management purely on contract basis *vide* order No. 196/ECD/CTU/HOD/2004, dated 28.06.2004. It is also not disputed the terms of the workman was extended from time to time. The main grudge of the workman is that he has been terminated without any notice and he has not been given any retrenchment compensation and he is totally relying upon the award dated 27.02.2013 published *vide* notification No. 13/1/8640-HII(2)-2013/9958, dated 29.05.2013 passed the then Presiding Officer, Industrial Tribunal & Labour Court, Union Territory Chandigarh.

12. The workman has duly proved on record Exhibit 'AW1' which is bio-data of the workman, Exhibit 'AW2' medical examination of the workman, Exhibit 'AW3' order of appointment dated 05.07.2004 i.e. through which the workman was engaged as Bus Driver on contractual basis for a period of 89 days or till the regular appointment of the candidate belong to the SC / OBC as Bus Driver whichever is earlier, Exhibit 'AW4' letter with regard to information regarding traffic education to CTU Bus Driver, Exhibit 'AW5' copy of 'Punjab Tribune' newspaper edition through which the advertisement regarding appointment of 45 Drivers on contract basis was advertised, Exhibit 'AW6' copy of driving licence of the workman, Exhibit 'AW7' copy Chandigarh Administration Gazette dated 29.05.2013.

13. The workman himself is stating that he has been dispensed / terminated from service on 27.04.2006 whereas he has joined on 07.04.2006 as per order No.4394/ECD/HOD/CTU/2006, dated 07.04.2006 and he has relied upon identity card which has been extended on 07.07.2008. Firstly, the workman failed to prove and produce on record in order No. 4394/ECD/HOD/CTU/2006, dated 07.04.2006 through which the service / contract of the workman was extended for further 89 days and no identity card has been proved on record through which it can be ascertain that the contract of the workman has been extended upto 07.07.2008. The workman has only proved on record Exhibit 'AW3' i.e. order No.205/ECD/CTU/HOD/2004 05.07.2004 in which he has been appointed on purely on contractual basis for 89 days thereafter one order dated 01.04.2005 through which the contract of the workman was extended for a period of 89 days i.e. 02.04.2005 to 29.06.2005. Hence, no order with regard to extension from 07.04.2006 placed on record.

14. Arguments addressed by the workman that it is admitted by the management witness that the contract of the workman was extended from time to time. I have gone through the cross-examination of MW1. MW1 during her cross-examination admitted that initially the contractual appointment was for 89 days and it was extended from time to time after gap of two three days. Hence, MW1 simply admitted with regard to extension of 89 days but has not directly admitted contractual extension for the period from 07.04.2006. Document with regard to extension of contractual period from 07.04.2006 has not been proved on file that document is very much material to pursue from which date the workman further joined the services.

15. Further it is stand of the workman that on 27.04.2006 he performed the duties and in the evening his services have been terminated by stating that regular appointment of SC / OBC category has been made. The workman himself while stepping into the witness box as AW1 admitted this fact in his cross-examination that the department has terminated his services along with other Driver in the year 2007 on joining of regular incumbents. Meaning thereby the services of the Driver has been terminated on joining of regular appointment. Further this fact is very well made clear in the order dated 05.07.2004 Exhibit 'AW3' that **the services of the workman shall automatically stand discontinued after expiry of contract period, without assigning any notice and no compensation of any type will be admissible to them on account of discontinuation of his contractual services.** Similarly, in order dated 01.04.2005 it is also mentioned that the terms & conditions of appointment will remain the same as laid down in the appointment letter bearing No. 196/ECD/HOD/CTU/2004, dated 28.06.2004. So it is crystal clear from the aforesaid discussion that the workman has failed to prove any documentary proof with regard to extension of his service whereas as per order of Exhibit 'AW3' the management has terminated the services of the workman as per appointment as regular appointment already been joined on the same day on which date the workman alleged to terminated from the services. Hence, the workman is not entitled for retrenchment compensation. Arguments of the workman that his case is totally covered under the award dated 27.02.2013 does not inspire confidence as in that case the contractual Drivers were ordered to be reinstated as regular vacancies were lying **at that time** but in the present case in hand there is nothing on the file that **regular vacancies were existed at the time of termination of the workman** rather it is admitted by the workman himself regular appointment have been made on the same day when his termination has been made. Hence, termination is not illegal. This issue is decided against the workman and in favour of the management.

Issue No. 2 :

16. Onus to prove this issue was on the management. Learned representative for the management has argued that the present claim of the workman is not maintainable being highly belated. Impugned order was passed in the year 2006 whereas the present claim challenging the same was filed after 10 years of cause of action. On the other hand, there is no bar of limitation to challenge termination under the ID Act.

17. I have considered the submission of learned Law Officer for the management and learned representative for the workman. Admittedly, the services of the workman were terminated in the year 2006 and the demand notice, on the basis of which the present industrial dispute has been raised and statement of claim filed, was filed 16.08.2015. Although there is no time limit to make reference under Section 10 of the ID Act **but there must be reasonable justification under for the delay.** In this regard reliance is made on citation titled as **Nedungadi Bank Limited Versus K. P. Madhavan Kutty, 2000(3) Vol.75 All India Services Law Journal 22 (SC)** wherein the Hon'ble Supreme Court of India as held as under :—

"5. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial was ex facie bad and incompetent."

Further, similar views have been observed in citation **Prithvi Singh Versus Executive Engineer, HPSEB Limited, Division Rajgarh, District Sirmaur, H.P. & Others, CWP No.4847 of 2015 decided on 26.08.2019 by Hon'ble Himachal Pradesh High Court.** In the present case in hand, no reasonable justification has been putforth by the workman for challenging his termination after more than nine years. In the light of law laid down and discussion made above, the present claim of the workman is barred by delay and laches. Accordingly, this issue is decided in favour of the management and against the workman.

Relief :

18. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 20th September, 2021.

(Sd.). . .,
(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal &
Labour Court,
Union Territory Chandigarh.
UID No.PB0095

Secretary Labour,
Chandigarh Administration.

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